

**SAMPLE AGREEMENT BETWEEN
CITY/COUNTY ASSOCIATION OF GOVERNMENTS OF SAN MATEO
COUNTY
AND**

This Agreement entered this _____ day of _____, 2013, by and between the CITY/COUNTY ASSOCIATION OF GOVERNMENTS, a joint powers agency for the development and implementation of the Congestion Management Program for San Mateo County, hereinafter called "C/CAG" and _____, hereinafter called "Contractor."

W I T N E S S E T H

WHEREAS, C/CAG is a joint powers agency formed for the purpose of preparation, adoption and monitoring of a variety of countywide state-mandated plans and is responsible for countywide, multimodal transportation planning within San Mateo County; and

WHEREAS, C/CAG is prepared to award funding for development of the Regional Traffic Signal System Upgrade; and

WHEREAS, C/CAG has determined that Contractor has the requisite qualifications to perform this work.

NOW, THEREFORE, IT IS HEREBY AGREED by the parties as follows:

1. Services to be provided by Contractor. In consideration of the payments hereinafter set forth, Contractor agrees to perform the services described in Exhibit A, attached hereto (the "Services").

2. Payments.
The Contractor shall submit invoices based on completion of milestones and percent complete as installation progresses. Contract invoices shall be paid in full after inspection and acceptance of the system by C/CAG and receipt of properly prepared invoice in duplicate with ten percent (10%) retention. Retainage shall be held until final acceptance of the system.

3. Relationship of the Parties. It is understood that Contractor is an Independent Contractor, and that this Agreement is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture or association, or any other relationship whatsoever other than that of Independent Contractor.

4. Non-Assignability. Contractor shall not assign this Agreement or any portion thereof to a third party.

5. Contract Term. This Agreement shall be in effect as of _____, 2013, and shall terminate on _____ unless otherwise extended or terminated as set forth herein. C/CAG may terminate this Agreement at any time for any reason by providing 30 days' notice to Contractor. Termination to be effective on the date specified in the notice. In the event of termination under this paragraph, Contractor shall be paid for all services provided to the date of termination.

6. Hold Harmless/ Indemnity: Contractor shall indemnify and save harmless C/CAG, its agents, officers, and employees from all claims, suits or actions to the extent caused by the negligence, errors, acts or omissions of the Contractor, its agents, officers or employees related to or resulting from performance, or non-performance under this Agreement.

The duty of the parties to indemnify and save harmless as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

7. Insurance:

The Contractor shall provide at its own expense and maintain at all times the following insurance with insurance companies licensed in the State of California and shall provide evidence of such insurance to C/CAG as may be required by the Risk Manager of C/CAG. The policies or certificates thereof shall provide that, thirty (30) days prior to cancellation or material change in the policy, notices of same shall be given to the Risk Manager of C/CAG by certified mail, return receipt requested, for all of the following stated insurance policies:

WORKER'S COMPENSATION – in compliance with the statutes of the State of California, plus employer's liability with a minimum limit of liability of \$500,000.

GENERAL LIABILITY insurance with a minimum limit of liability per occurrence of \$1,000,000 for bodily injury and \$100,000 for property damage or \$1,000,000 combined single limit. The insurance shall indicate on the certificate of insurance the following coverages and indicate the policy aggregate limit applying to: premises and operations; broad form contractual; independent consultants and subcontractors; products and completed operations; and professional liability.

AUTOMOBILE LIABILITY insurance with a minimum limit of liability per occurrence of \$1,000,000 for bodily injury and \$100,000 for property damage or \$1,000,000 combined single limit. This insurance shall cover "hired and non-owned vehicles" for bodily injury and property damage where Consultant represents in writing to C/CAG that it shall not utilize owned vehicles in the performance of this agreement. The insurance shall cover either "scheduled vehicles" or "any auto," or both, for bodily injury and property damage where Consultant shall use owned vehicles in the performance of the contract.

PROFESSIONAL LIABILITY insurance with a minimum limit of \$1,000,000 per claim and policy aggregate.

If at any time any of said policies shall be unsatisfactory to C/CAG, as to form or substance, or if a company issuing such policy shall be unsatisfactory to C/CAG,

Contractor shall promptly obtain a new policy, submit the same to the Risk Manager for approval and submit a certificate thereof as hereinabove provided. Upon failure of Contractor to furnish, deliver or maintain such insurance and certificates as above provided, this Agreement, at the election of C/CAG, may be forthwith declared suspended or terminated. Failure of the Contractor to obtain and/or maintain any required insurance shall not relieve the Contractor from any liability under this Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations of the Contractor concerning indemnification.

C/CAG, its agents, officers, employees, and volunteers shall be named as an additional insured on all insurance policies required herein, except Workers' Compensation and Professional Liability. The Workers' Compensation insurer shall agree to waive all rights of subrogation against C/CAG, its agents, officers, employees, and volunteers for losses arising from work performed by Contractor for C/CAG. The Contractor's insurance policy(ies) shall include a coverage provided to additional insured; and, shall be placed with insurer(s) with acceptable Best's rating of A:VII or with approval of the Risk Manager. The Contractor must deliver certificates evidencing existence of the insurance listed above to C/CAG Clerk at the time the contract is signed.

Contractor shall provide C/CAG with separate endorsements evidencing proof of C/CAG's additional insured status as to both the general liability and automobile liability insurance policies. In addition, Contractor shall provide C/CAG with a Workers' Compensation subrogation waiver by way of a separate endorsement. All endorsements referenced above must include the applicable policy number.

For any claims related to this project, the Contractor's insurance coverage shall be primary insurance as respects C/CAG, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by C/CAG, its officers, officials, employees, or volunteers shall be excess of Contractor's insurance and shall not contribute with it.

8. Non-discrimination. The Contractor and any sub-Contractors performing the services on behalf of the Contractor shall not discriminate or permit discrimination against any person or group of persons on the basis of race, color, religion, national origin or ancestry, age, sex, sexual orientation, marital status, pregnancy, childbirth or related conditions, medical condition, mental or physical disability or veteran's status, or in any manner prohibited by federal, state or local laws.

9. Compliance with All Laws. Contractor shall at all times comply with all applicable laws and regulations, including without limitation those regarding services to disabled persons, including any requirements of Section 504 of the Rehabilitation Act of 1973.

10. Substitutions: If particular people are identified in this Agreement as providing services under this Agreement, the Contractor shall not assign others to work in their place without written permission from C/CAG or designated personnel. Any substitution shall be with a person of commensurate experience and knowledge.

11. Sole Property: Work products of Contractor which are delivered under this Agreement or which are developed, produced and paid for under this Agreement, shall be and become the property of the agencies identified by C/CAG. Contractor shall not be liable for C/CAG's use, modification or re-use of products without Contractor's participation or for purpose other than those specifically intended pursuant to this

Agreement.

12. Access to Records. C/CAG, or any of its duly authorized representatives, shall have access to any books, documents, papers, and records of the Contractor which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcriptions.

The Contractor shall maintain all required records for three years after C/CAG makes final payments and all other pending matters are closed.

13. Merger Clause. This Agreement, including Exhibit A attached hereto and incorporated herein by reference, constitutes the sole agreement of the parties hereto with regard to the matters covered in this Agreement, and correctly states the rights, duties and obligations of each party as of the document's date. Any prior agreement, promises, negotiations or representations between the parties not expressly stated in this document are not binding. Any subsequent modifications must be in writing and executed by the parties. In the event of a conflict between the terms, conditions or specifications set forth herein and those in Exhibit A attached hereto, the terms, conditions or specifications set forth herein shall prevail.

14. Governing Law. This Agreement shall be governed by the laws of the State of California and any suit or action initiated by either party shall be brought in the County of San Mateo, California.

15. Notices. All notices hereby required under this agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid and addressed as follows:

City/County Association of Governments of San Mateo County of San Mateo
555 County Center, 4th Floor
Redwood City, CA 94063
Attention: Parviz Mokhtari

Notices required to be given to Contractor shall be addressed as follows:

CONTRACTOR
Address

